

GEORGE G. KEMSLEY
GKEMSLEY@BODMANLAW.COM
313-393-7553

BODMAN PLC
6TH FLOOR AT FORD FIELD
1901 ST. ANTOINE STREET
DETROIT, MICHIGAN 48226
313-393-7579 FAX
313-259-7777

bodman
ATTORNEYS & COUNSELORS

October 26, 2011

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Detroit, Michigan 48909

Re: ADM File No. 2002-24, July 19, 2011

Dear Mr. Davis:

I write in my capacity as general counsel for Bodman PLC and as chair of the firm's professional conduct committee. We believe that the proposed changes to MRPC 7.3 are not only overbroad and ambiguous, but that the proposed changes could have deleterious and unintended consequences.

We endorse the comments in opposition to ADM File No. 2002-24 that have been submitted by several other commentators, in particular the October 17, 2011 letter from Miller Canfield's CEO, Michael W. Hartmann, the October 18, 2011 letter from Steven Kohl of Warner Norcross, and the October 26, 2011 letter from Mark Stern of Honigman.

I disagree with several other commentators who have urged the Court to prohibit communications concerning filed lawsuits for some period of time after the filing date because of speculative concerns about what a defendant might do if notified of the action prior to service of process. If such a zone of silence were to be imposed, some unrepresented parties could be impaired by the delay, as time limits for responding to court papers would continue running, evidence might be lost, and other necessary activities might not be taken to protect important interests. A broad prohibition on lawyer communication could harm unsophisticated persons who need assistance.

I primarily write concerning the impact of the proposed changes on large law firms that represent sophisticated business clients.

Many large law firms represent corporate clients that are also served by other firms. Some of those clients may have engaged a firm dozens or hundreds of times over decades. If a lawyer sends a note regarding a legal development to a member of the legal staff or to an executive at one of those sophisticated corporate clients,

Corbin Davis, Clerk of the Court.
Michigan Supreme Court
October 26, 2011
Page 2

unrelated to a specific pending representation matter, would that be considered an "advertising circular" that must be labeled as "Advertising Material" because it might encourage the selection of that firm over others on a subsequent legal matter? Is the result different if that same communication is sent by email to all of the firm's clients? Would firm announcements concerning promotions or new lawyers be considered advertising? No obvious purpose is served by discouraging such informational communications with sophisticated clients.

Similarly, many large law firms encourage their lawyers to participate in ABA committees, to serve on charitable boards, to present seminars, and to participate in other activities that increase their knowledge and skills, and that have the not-incidental effect of raising their profile. Would communications relating to such activities be considered to be "advertising circulars" because they are in part intended to enhance the stature of the lawyer or firm? We submit that it is both unnecessary and unwise to require such communications to be labeled as advertising material.

Because violations of the Rules of Professional Conduct are punished by sanctions not against law firms, but against individual lawyers, I suspect that some lawyers may avoid risk by choosing not to participate in otherwise commendable activities because they do not want to comply with ambiguous and burdensome advertising rules by labeling all of their email and other communications relating to those activities as advertising materials. Thus, in addition to all of the other deficiencies pointed out by Messrs. Hartmann, Stern and Kohl, and several other commentators, the proposed amendment of MRPC 7.3 may actually harm professionalism by discouraging lawyer participation in educational and other laudatory activities.

For these reasons, we respectfully request that the Court decline to adopt the proposal.

We appreciate the opportunity to comment on ADM File No. 2002-24.

Very truly yours,



George G. Kemsley

GGK/tih